Remarks:

Regarding the rejection to the specification and the terms "Amberlite" and "Duolite":

The foregoing amendments to the specification are believed to address and overcome the outstanding grounds of rejection as to the use of the foregoing terms.

Regarding the rejection of claims 1 – 12 under 35 USC 103(a) in view of WO 02/18280 (hereinafter "WO280"):

The applicant respectfully traverses the rejection of claims 1 -12 under 35 USC 103(a) in view of the WO280 reference, ostensibly in view of the further references of WO 98/40464 (hereinafter "WO464"); DE 19937428 (hereinafter "DE428"); US 2001/0009892 to Bonsall (hereinafter "Bonsall"), or US 2002/0004472 to Holderbaum (hereinafter "Holderbaum").

With respect to the WO280 reference the applicant points out that such document has been cited by the applicant in the present application as indicative of a prior art product which while effective, suffers from certain technical shortcomings. Such is disclosed by the applicant in their (now published) US 2008/0059310 at the following paragraphs:

> **[0006]** WO0218533 and WO0218280 describe water-softening products that are not necessarily consumed during washing processes, because they are not water-soluble, and which are too large to be washed away during any rinsing step.
>
> **[0007]** We have found that such products are not sufficiently chemically stable over extended periods, months, when the product may be stored in a warehouse, shelf or consumer's house prior to use. Therefore, there is a need to develop a system of improving the chemical stability of such products.

Thus, this prior art document is known to the present applicant, and which is also commonly assigned to a common assignee.

Prior to discussing the relative merits of the Examiner's rejection, the undersigned reminds the Examiner that the determination of obviousness under §103(a) requires consideration of the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 [148 USPQ 459] (1966): (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. *McNeil-PPC, Inc. v. L. Perrigo Co.*, 337 F.3d 1362, 1368, 67 USPQ2d 1649, 1653 (Fed. Cir. 2003). See also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2D 1385 (U.S. 2007).

A methodology for the analysis of obviousness was set out in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000) A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

Now, with respect to WO280, while that prior art document discloses the use of water softening products, WO280 fails to disclose or suggest that there are any attendant technical problems resulting from the long term storage of its water softening products under adverse storage conditions, viz., relatively high humidity and/or elevated temperatures. WO280 also fails to recognize, teach or suggest any specific packaging type or properties of a packaging type or material which would be useful in addressing or overcoming such technical problems, as -- simply stated --, WO280 recognizes no such technical problems. Thus, WO280 should not be held as providing any useful teaching or suggestion within the scope of 35 USC 103(a) in solving a technical problem which it does not recognize. Thus, it is believed that the Examiner's reliance upon the WO280 reference is flawed and improper for such reasons. The Examiner's subsequent reliance

upon the later references of WO464, DE428, Bonsall and/or Holderbaum is also believed to be improper as being based on an impermissible hindsight reconstruction of the applicant's invention. The Examiner is reminded that in *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), the Federal Circuit stated:

> "It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. *In re Gorman*, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." (quoting *In re Fine*, 837 F.2d at 1075, 5 USPQ2d at 1600)

See also *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 220 USPQ 303 (CAFC, 1983); *In re Mercier* 185 USPQ 774, 778 (CCPA, 1975); *In re Geiger* 2 USPQ2d 1276 (CAFC, 1987); *In re Rouffet*, 47 USPQ2D 1453 (Fed. Cir. 1998). The Examiner's recitation of WO464, DE428, Bonsall and/or Holderbaum is improper because WO280 recognizes no such technical problems attendant upon the storage of the WO280 water softening products under adverse storage conditions, viz., relatively high humidity and/or elevated temperatures, thus, a skilled artisan would not seek out the prior art of WO464, DE428, Bonsall and/or Holderbaum for a solution to a problem which WO280 did not recognize as existing.

In view of the foregoing, reconsideration of the propriety of the outstanding rejection of all of the claims is requested.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience. The early issuance of a *Notice of Allowability* is solicited.

CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

PETITION FOR A TWO-MONTH EXTENSION OF TIME

The applicants respectfully petition for a two-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

Respectfully Submitted;

Andrew N. Parfomak, Esq. — Date: 26 August 2008
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CERTIFICATION OF TELEFAX TRANSMISSION:

I hereby certify that this paper and any indicated enclosures thereo is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571-273-8300 on the date shown below:

Andrew N. Parfomak — Date: 26 Aug 2008

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